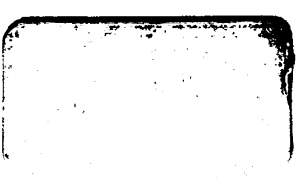

Hon. James S. Mitchell.

INTRODUCTORY ADDRESS

OF THE

SESSION OF 1878-9

OF THE

LAW DEPARTMENT

OF THE

UNIVERSITY OF PENNSYLVANIA.

BY HON. DANIEL AGNEW LL. D.
CHIEF JUSTICE OF PENNSYLVANIA.

PRINTED BY REQUEST OF THE CLASS.

PHILADELPHIA:
LEGAL INTELLIGENCER OFFICE, 132 S. SIXTH STREET,
1878.

CORRESPONDENCE.

PHILADELPHIA, *October* 6, 1878.

To the Hon. DANIEL AGNEW, LL. D.

DEAR SIR:—At a meeting of the students of the Law Department of the University of Pennsylvania, held Thursday, October 3d, remarks were made expressive of the interest, pleasure, and profit experienced from listening to your Introductory Lecture, and a Committee was appointed to ask your permission to have printed, in pamphlet form, for distribution among the students and friends of the Department, your very admirable Address. Hoping for a favorable reply, we remain,

Respectfully, your obedient and thankful servants,

H. LAUSSAT GEYELIN, *Chairman.*

LINCOLN L. EYRE, GEO. STANLEY PHILLER,
WILLIAM J. SMYTH, FRANCIS A. LEWIS, JR.

PITTSBURGH, *October* 10, 1878.

GENTLEMEN:—Yours of the 7th inst. has been forwarded to me at this place. I take pleasure in acquiescing in your request for publication. I delivered the MSS. to Professor Mitchell, and considered it then at his disposal.

With great respect,

Yours Truly,
DANIEL AGNEW.

H. LAUSSAT GEYELIN,
and others, Committee,
Philadelphia, Pa.

ADDRESS.

I SHALL not speak to-day upon any special topic, but shall rather attempt to impart my own thoughts on various subjects germane to the experience of a lawyer. Of topics and books a student will have enough, but of the every-day knowledge of a lawyer he can have none, unless he draws it from those who have trodden the professional pathway before him.

The fact that this is a Department of the University of Pennsylvania suggests my first thought. The University is an old institution of the State, and its Law Department leads our minds to the contemplation of Pennsylvania jurisprudence. The founder of the colony, though the subject of a king, brought with him the sentiments and notions of a republican. In all his great acts as a leader he mingled the spirit of freedom, justice, personal rights, and public good. The common law of England, as a system of *principles*, and the statute, so far as applicable to the new situation, became the basis of the colonial law, yet these were so modified as to maintain the fundamental rights of men, and to partake of the qualities which inspired his mind. When independence came, they entered into the texture of the Constitution, forming the framework of the State government.

This love of justice, untrammeled by harsh law, and

called for by the feelings and opinions of the colonists, led early to that peculiar system which administers equity under common law forms of procedure—a system, the wonder of lawyers accustomed to a court of chancery, yet now recognized and largely accepted by our mother country, whose recent reforms are even a greater wonder. This subject, itself a noble theme, might engage an entire address, but is now mentioned only to attract attention, and draw appreciation to the advantages of this Institution. None other can better lay the broad foundation on which a Pennsylvania lawyer must build his knowledge of our law. Nor do I think the basis too narrow for the rising statesman. Built on the groundwork of freedom, justice, personal rights, and the public welfare, it fits the mind for the higher conceptions of the Federal and National law.

Apart from my MSS., I feel impelled to say my heart is drawn toward this Institution by an old but cherished ligament. I hold the diploma of my father, granted by the Medical Faculty on the 31st of May, 1800, and signed by Drs. Shippen, Rush, Wistar, Woodhouse and Barton, and the separate certificate of Dr. Dewees.

The American lawyer has a peculiar experience. Coming generally from the horizontal plane of the people, before the noon of life he toils for bread, but when his sun has reached the meridian he begins the pursuit of reputation and honor, trusting that his evening rays will grow into the gorgeous light of a brilliant sunset; and in this expectation, if learned and honest, he is seldom disappointed.

Much of the success of a lawyer depends on right notions of law and government, the want of which forms the trickster and the pettifogger. But when his mind is filled with just conceptions of their true origin, and he traces all laws to their divine source, he rises to the grandeur of their import, and his conscience becomes alive to their obligation. Without a proper sense of the obligation of law, he degenerates into the common-place practitioner and the cunning advocate.

Law! grand, divine, immortal energy! Springing from the unbounded depths of Jehovah, it pursues nature into all her pathways, and invests all being with its power. Surrounding man with a divine investure, it accompanies him at every step from birth to death, forming his code of morals, and becoming the guide of his conduct, and the true basis of right government. There is a unity and harmony centring all things natural and moral in the Creator, and binding all their systems of order in a single bond. It cannot be otherwise, unless we suppose more than one creator of matter and of mind; for the same great Author deals not in repugnant diversity, but unites all things in simple oneness.

The physical nature of man, body and brain, is governed by the natural law. These organs of life and thought are the instruments of human conduct, through which the spirit acts, and necessarily partakes of that law which governs vital and mental action. Human conduct, the special subject of moral law, is itself a necessary result of the natural constitution of man, for his relations to others spring from natural conditions—the sexes, birth, growth, and sustenance by food,

clothing and shelter, all under the dominion of natural laws. The appetites and passions of men come from body and brain, while even education arises in the existence of natural laws, as seen in the laws of beings, their varieties, habits, qualities and modes of action. Hence the natural law and the moral law, or governing principle of human conduct, come from the same divine source, are truly one, and have the same obligation.

Government—the system of law which governs men in multitude, arising in the wants and necessities of the race, partakes of the same unity. It is an extension only of the moral law to a great number of persons in new relations, whereinto they come by living together—the application of the rules of individual conduct to these relations, varied by circumstances, yet arising from aggregation. Its divine origin is seen in the nature and constitution of the race. These require cohabitation of the sexes, birth and nurture, for its perpetuation. The regulation of the sexes, and the duties of marriage, and nurture of offspring, cannot be properly maintained without government, and the inequality of persons in health, strength and capacity, makes government a necessity for *their* regulation also. Now the instant we arrive at the conclusion from nature that government is a necessity springing from the constitution of the species, as given by the Creator himself, we reach the result that it is of divine appointment; for whatever is a *natural* necessity of the race, is as certainly a result of Providential order, and this order must arise in the divine will.

Hence it is clearly an error to rest the obligation of

governmental law upon individual consent or contract. Man was designed to live in communities. The earth is covered with nations and tribes. Its topography of land and sea, mountains, rivers and plains, constituting natural barriers, and all history proclaim this divine intent, and proves the Providential order. *Forms* of government often do rest in compact, expressed in constitutions. But if the obligation of public law arises in contract or consent only, its powers are necessarily limited, for then no power can be exercised by government which contract cannot confer, and men cannot contract away their lives and natural rights. But when the rightful authority of government is found to arise in the divine will, the right follows to exercise the highest functions of government extending to the taking of life and property, in case of emergency, or war, or in punishment of crime. The necessity then determines the rightful exercise of the power. The principle of love strengthens the argument. Love inspired creation, then blessed the creature. It is the divine principle of unity revealed to man, constituting that great law which unites the race to its maker, and itself in the bond of universal brotherhood.

Hence I say that the success of a truly great lawyer depends much on his notions of law and government. He must be convinced of their harmony with the natural and moral law, and that their source of obligation is the divine will. Then his conscience becomes his powerful aid in practice; and as a result, his reputation and honor keep pace with his good conduct. Were all governed by these views, the profession would not be reproached for the misconduct of those

who use it as a mere means of lucre; but would fill the world with its lustre, and crown the human race with the highest type of man. Perhaps none else perceives with greater quickness the finer shades of human duty. Accustomed to daily analysis of the motives and actions of men, the observation of the lawyer is acute, his reasoning clear, and his conclusions accurate, often more so, than of those who assume to be teachers of men. They deal in generalities; while he, accustomed to examine the minute transactions of life, where lines of duty fade and almost disappear, catches their evanescent hues, and fixes them like an instant photograph. Thus the lightest shades of virtue and of vice form a picture in his mind, ready for instant use.

We learn hereby the training proper for the great and good lawyer. This language indicates its basis. I cannot separate *great* and *good*. Either, without the other, fails to present a perfect character. His mind must be trained to close observation, to think accurately and reason consecutively. He must not merely perceive, but must fully comprehend his question, stripping it of the immaterial and redundant, preserving everything essential, and viewing accurately its relations and bearings in all directions—for and against—private and public. Without this preparation his conclusions will probably be partial, or indefinite—vague conjectures, rather than accurate deductions.

Here let me advert to a distinction to be made by the student—the difference between learning and mental power. Learning is necessary, and the more he has, the more useful can his mental power be. But learning, without the intellectual vigor to use it,

is valueless. It is the latter which seizes a question, with giant grasp, finds its elements, and solves it by clear and demonstrative reasoning. Books furnish learning, but exercise confers power. It is this vigor of the intellect which is most needed by the lawyer and judge in dealing with the questions of real life, yet it is aided by learning.

It must not be supposed that vigor is solely the offspring of unusual natural talent or inbred power. A good common intellect may reach wonderful attainments by study and exercise. Written efforts to reason and express conduce greatly to this end. In defining a thought in written language, the mind clarifies itself, and perceives more distinctly its own operations. The eye and mind, acting in unison, trace on the written page the thinking process, correcting deficiencies, eliminating redundancies, and following closely the consecutive steps of reasoning. I remember an illustration of the result of effort in the opinion of an excellent judge. As first written, his opinion contained eighteen pages, which, after five or six trials, were reduced to six.

I would not dwarf the importance of the learning derived from books, but I would make clear the necessity of cultivating mental power to use it well. Therefore it is the study of the demonstrative mathematics, as distinguished from the arithmetical, is so often recommended. It is the patient consecutive thought necessary to demonstration, which prepares the mind for reflection upon the morality of actions, and the legality of acts or conduct, in the practical affairs of life.

Learning, alone, resembles a great piece of ordnance, for example, the Krupp gun. It is immense in its proportions, ponderous in material, and a synonym of power in its enginery. Fill it with the black grains of destruction, lift into place the ponderous globe of steel, and make it ready for action. But why does it stand still? It moves not. It is powerless as an infant; harmless as the bird of peace. Yet stay! Apply the kindling fire. And now the pent up thunder of its iron throat echoes from peak to peak, until long mountain ranges re-echo the appalling sound. Nature shrinks, and for a moment falls before the hell-born vomit of its mouth. Thus the fire of a vigorous intellect kindles learning into a wonderous flame of power.

To sum up study, I would say in a word: All knowledge is useful to a practicing lawyer; and none more than that every-day knowledge which concerns the business of life. Many a good cause has been lost by a lawyer's ignorance of his client's business, or of the subject of litigation. An accurate habit of thought is necessary in this study. You enter a shop and see a machine in operation. At first all is confusion to the eye, and so it will continue if the mind make no effort to understand. But making it, and beginning with the application of the power, by band, shaft or cog-wheel, the eye traces, step by step, each successive part, follows its motions, sees the instruments employed, reaches the subject of the process, and perceives the effect accomplished, whether the product be a coin, a screw, a nut or a nail.

A student or a practicing lawyer should never think

it beneath him to look into every art or branch of industry coming within the opportunity of examination. He will often find in the grimed operative a well trained mind in his art and a skillful hand; capable of giving information; adding also to the study of mankind. Much pleasure is derived from these examinations. The mind enters a new realm of thought, exhibiting new modes of action and effects of application. The inventive faculty, as traced in machinery, is a wonderful study, and, as the results enter into the affairs of life, their knowledge becomes of great utility to the practicing lawyer. Perhaps some young gentlemen, inexperienced as yet, may deem these observations of little moment. Notions of rank and refinement often prevent them from availing themselves of the benefits of practical education. Accustomed to regard the operative as in a different sphere and beneath them, their first impulse is to avoid. But this is an error often seen in after-life. Besides, in this country, an attempt to trace a genealogy back to the grandparents will sometimes land the inquirer in a tradesman shop or a kitchen. Let me assure such students that useful knowledge pertaining to the affairs of life, is of inestimable value in practice.

The well trained lawyer needs more than mental culture. That may make him great; he must add that culture which makes him good—a blessing to the world instead of a curse. He must, therefore, cultivate his conscience, that, by its quickened instinct, it may readily perceive right and wrong. Without this sensitiveness to the qualities of moral action, an acute mind may err. It may adopt false premises, or postu-

lates of a train of thought, and pursue the reasoning to a logical but a false conclusion, or it may fail to perceive the finer and more subtle shades of difference essential to a correct determination. First principles enter into every department of knowledge, and constitute the postulates or bases of reasoning therein. It is the sensitiveness of conscience to the first principles of moral action I mean to emphasize, as essential to the upright lawyer. Having a mind thus thoroughly imbued with right principles, his mental power and acuteness make him an overmatch for the trickster and the knave, for even bad men, as listeners, will acknowledge the power of moral truth presented by an honest and vigorous mind.

Advancing from the individual to the profession, it may be said of the Bar proper, it is a necessity and a blessing to mankind. I say proper, to distinguish the worthy from the unworthy. To the superficial this might appear to be exaggeration; like hollow eulogy over the lifeless remains of a useless man. But go into every walk of life, every rank, station or business, and the first and most necessary man you meet there is the honest lawyer. Peer into the grave itself, and there he stands on watch over the interests of those who mourn beside it. Is there an important question to be determined, he is called in to solve it; a sacred trust to be filled, he is requested to take or superintend it; an intricate estate to be settled, his advice is essential. He is entrusted with the most sacred confidence, and cannot be compelled to violate it. Vast sums of money, immense interests, even life itself, are placed in his hands, without security, save in his honor and integrity.

Allow me to quote from an opinion (Dickens' Case, 17 P. F. Smith, 177): "The office of an attorney at law is a highly honorable one, as well as one of great importance to society. The necessities of men in a state of high civilization require the profession of the law as a distinct calling; one to be exercised by men trained to it by a long course of study, and qualified by skill and learning to understand, protect and assert the rights of others; who, by reason of the state of society, or their own inability, cannot act for themselves. As property increases and new forms of it are developed, new institutions are created for its management; and as the business of society multiplies, interweaves and expands, and wealth and luxury follow in the train of commerce and the arts, the relations of men become more and more complicated, and render the profession of the lawyer indispensable and important. Integrity, as well as skill and learning, is essential to the character of the profession, and it becomes the duty of the Bench, as well as the Bar itself, to preserve that character in its highest state as a means of usefulness, and of answering the end of a profession so honorable, and, at the same time, so needful."

You will perceive I place a great value on personal character as essential to complete success. Its elements are integrity, conscience, good sense, correct principles, love of justice, hatred of falsehood and of meanness, and a resolution, by which I mean *courage*, to act out right purposes. To these he must add that which is essential to all achievement—labor—the industry which toils for success.

We admire genius, and are apt to think *it* only can

accomplish that which is great or worthy. And certainly when, like a beautiful capital, genius surmounts the column of qualities I have named, it becomes the wonder of mankind, and often immortalizes its possessor. Yet be not deceived, genius is the lot of few. But *eminence* will become that of many without it, who possess and practice these virtues. Ancient wisdom is supposed to have taught the way to success in fable, when Æsop, the slave, instructed in this form at the Court of Crœsus. You remember the fabled race of the antelope and the tortoise, when the former, like genius, confident of victory, relaxed her efforts, and lying down to rest in fancied security, was passed by the toiling tortoise, whose slow but steady progress won the race. Genius is the gift of God; labor the effort of man. Mark yon temple reared by labor's hands. Far below the surface the toiling workmen first began; slowly the deep foundations grew, and above the earth, stone by stone, its lofty height arosė; the architrave was reached, then the ample dome, and now the tapering spire, piercing the sky with its point, draws down the lightning; and the morning sun, glancing with horizontal beam, as over Memnon's statue, strikes the key of music on its dome, and wondrous strains fall upon the ear; then the evening rays burnish it with their most brilliant golden hues. A thing of grandeur, there it stands, a monument of labor. Genius may adorn its finished columns, but without labor, the ideality of genius had found no realizing fact; no living existence.

So, in the profession, genius may add to language the charms of flowing rhetoric, and to reason the per-

suasiveness of attractive speech, but still labor, industry and toil, are the only certain assurance of success. Indeed the nature of a lawyer's business, involving patient examination, the collation of facts, and the application of legal principles, often gathered by extended research, demands great labor and frequently exhausting toil.

Returning now to law, but in its limited sense—municipal law—as the subject of study, let me notice a difference between the English common law as practiced there, and the common law as imported into the colony and practiced here. The former was the slow growth of centuries, filled with the peculiarities of English institutions. Consisting of customs general and particular, it is said by the great commentator, that their monuments and evidence are found in the records of the courts, in books of reports and judicial decisions, and in treatises of learned sages of the profession, preserved and handed down to us from the times of the highest antiquity. Hence much of the labor of the profession there is expended in the examination of cases, and comparing, tracing and applying precedents. But when the colonies were settled, time had reduced these heterogeneous masses into maxims and abstracts found in learned treatises and abridgments, arranged under convenient heads, constituting an orderly system of *principles* rather than precedents, ready for application to cases as they arose. In the new country, whose litigation was as simple, for many years, as the primitive habits of the people, and lowest species of property, with little or no wealth, and with rare demands for investigation, few of the

original sources of legal knowledge were to be had, and perhaps it was fortunate for us it was so. Having few precedents, no extensive libraries, and freed from the labor of examining cases, reconciling, distinguishing or overruling precedents, the inhabitants of that early time sought rather for the principle and reason of decision, and, thus guided, labored to found their laws upon individual right and public interest, based upon justice, and enlarged and perfected by reflection. In this they followed the bent also of the proprietor and founder of the colony. Were this difference, between English and Pennsylvanian customary or common law, oftener borne in mind by the learned of the profession, our law would be saved from many a twist toward English peculiarity, and much of the difficulty found by eminent lawyers in building up and harmonizing our own system would disappear. A leading professional gentleman has well said, in an introductory lecture here in 1875, "The world has outgrown the notion that human reason is a dangerous explosive which must be hemmed in and barricaded on all sides. Reason is the ultimate basis upon which everything reposes." The truth of this remark is better appreciated when we consider that reason as a *faculty* is that God-given power which enables man to distinguish truth from falsehood, good from evil, and right from wrong, and to deduce conclusions from established facts while in *exercise* it is the pure ratiocination of the mind.

The difference between English and American law leads to another observation, caused by the unfortunate tendency in some to mould our law by English patterns. Often their search for English precedents

leads them to qualify, if not uproot, the principles of our laws, and to affect our institutions. I remember an instance when a Pennsylvania act was made to bend to the interpretation of an English statute. I think it unfortunate when the last "Jurist" has more weight than a Pennsylvania case. Let me not be misunderstood. It would evince a sad narrowness of mind to refuse to hear a well reasoned English decision, especially upon a case of commercial or general law; but when a lawyer insists on it to rule a Pennsylvania case, against the genius of our institutions, or the current of our opinions, he not only errs, but does a wrong. Thereby he would fasten upon a State, with dissimilar customs, habits of thought and structure of society, the spirit of the laws of a kingdom, differing widely in these, whose institutions, in many respects, are no pattern for a republican State. This proneness to make English cases rule our law is not infrequent. There are those who delight more in learning than in reason—who are so imbued with the study of English books, and bow with so much deference to great names and titles, they see nothing correct when opposed by an English case. In a State such as ours this is an error. The ideas of a monarchist, or the subject of a crown, are not the true seeds of liberal thought; those of class, caste, the servitude of menials, the degradation of labor, primogeniture, and the like, are not those to influence the laws of a republic, whose foundation is equality of citizens. Ideas beget principles, and these form institutions and governmental law. It is not a question of comparison—which is better than the other. Gentlemen may have different

opinions on this point, But we must recognize the difference as it is, and our laws must be made to secure the greatest welfare of our people under their own institutions, as they have begotten and nurtured them. While we should draw from the maternal fount all that nourishes growth in correct principles, we must not forget the difference in our own institutions, habits of thought, and currents of opinion on subjects growing out of our condition, otherwise a close adherence to English cases will not fail to mar our system, while it will add nothing to the interests of our people. But if reason have its rightful sway, the cramp of precedent relaxes, and healthful development takes its place. Then, no lordly Canute sits enthroned upon an English shore, to stay the tide of liberal progress and bid the advancing wave of justice stand still. Time tries all things—our literature, our science and our manners, as well as our laws. There is no brake which can stay the wheel of progress, and we might as well hold to the poetry of old Skelton as the rule of taste, as to cramp our laws by those of a century since.

This diversity of English law suggests another thought—the necessity of homogeneity in our own. Too often local customs and ideas control lawyers and even judges, forgetting that a single people cannot be governed by different codes. Nothing less than statute law can remedy the differences in local wants. Judicial decision cannot supply them. A decision applies equally to all parts of the State, and is retroactive in effect. Out of the range of a local necessity it is absolutely hurtful, and its retroaction unsettles rights founded on general laws. Hence if the law be taken

from local ideas, usages and circumstances, great injustice is done to those parts of the State where these do not prevail. This may be illustrated by a branch of the law in which Philadelphia is pre-eminent. Here conveyancing in all its parts is an established art, practiced by skillful professionals, and resting on fixed rules and formulas, giving a well defined expression to all important instruments used in the transfers of property, by sale, pledge, trust and will. The city is fortunate in this respect, but other parts of the State are not. Papers of vast importance are often drawn without skill by untrained hands, and frequently by men fresh from the ranks of the people, who cannot follow correctly even the forms established elsewhere. Now if lawyers and judges apply this skill and form to the crude productions of other places, holding the latter to the skill and perfection of the former, and interpreting by art instead of the intent, the ruin of thousands would follow.

Suffer me to quote from an opinion (2 Norris, 377):

"There is no procrustean bed on which words can be stretched to make them always fit certain legal results, whether intended so or not. Such a rule might suit city scriveners, where wills follow given formulas, but never could be tolerated in those parts of the State where ignorant men draw wills, a class outnumbering far the former. No greater outrage upon the rights of dying men could be committed than to defeat their just intention by rules which make words, and not the sense, the guide of intrepretation." Hence the necessity that the highest Bench of the State should possess the most enlarged experience, and most ample knowl-

edge of general State affairs. Neither the polish of a city, nor the narrowness of a petty borough, should rule the important interests of a great and widely extended people. City and country should be represented by their best jurists—honest and independent men, whose intellects are not dwarfed by their circumstances, who can rise superior to local prejudice, and break from their minds the padlocks which lock them up to narrow views of the laws, which govern the affairs of a great, yet diverse people. In this respect the value of good sense cannot be overrated; that broad, clear and just survey, which takes in all interests, fairly weighs and adjusts public and private rights, finds the happy mean, and pursues an even tenor; plain, practical and just to all. And we discover also the value of that Pennsylvania system of law, having its foundation in just conceptions of right and wrong, governed by enlightened conscience and piloted by good sense. Sufficiently attached to precedents to preserve titles and fixed rights; yet so plastic as to admit of development to new subjects, new forms of business, and the variations wrought in the structure of society and its ever changing affairs.

Yet this picture has a partial reverse. When I turn my eyes backward over the trodden pathway of decision I find errors, which I deem of great moment to the people; I mean the encroachments gradually, almost imperceptibly, made upon the rights of individuals by a narrow interpretation of the Declaration of Rights.

To be more clearly understood, let me quote the Declaration intended by the people for self protection.

It opens thus: "That the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare." This is an enacting clause, and declares that what follows is *essential* to liberty and free government, and shall be *unalterably* established. Yet there are those who act upon them, if they do not term them "glittering generalities."

Then follows the first and great declaration. "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness."

Much foolish criticism has been expended upon a literal interpretation of the words "all men are born equally free and independent;" which, says the learned expounder, every one knows not to be true, referring to self-evident natural inequalities, and overlooking the plain meaning evidenced by entrance into life by birth, and the natural God-given rights of men stated in the context. But be it theoretically true or not, this is certain, and all are bound by it, that the people who made the declaration have enacted that the enumerated rights shall be regarded as *essential*, and shall be *unalterably* established; and then, to prevent all mistake, or excuse for a mistake of their meaning, have closed their declaration with these emphatic words:

"To guard against *transgressions* of the high powers which we have delegated, we declare that EVERYTHING in this article is excepted out of the general powers of government, and shall forever remain inviolate."

These utterances of the people for their own protection, invest the right of private property with a sanctity no man has a right to invade, for light or unreasonable causes. To do so he must find clear and indubitable ground in the Constitution itself to justify his act. Nor should he treat this right as a mere generality, and attempt to fritter it away by verbal criticism. That sort of interpretation, by which the various utterances of the Declaration as to private property are attacked in detail, resembles the fable of the bundle of sticks. The united fagot will resist all attempts, but take it stick by stick its strength is broken. Such has been the process in several well known cases, until now the sacred right of private property, put by the Declaration in the category with life, liberty, reputation and the pursuit of happiness, is at the mercy of private corporations, municipal cormorants, and rapacious speculators.

The judiciary being a part of the government, and its powers, therefore, the subject of the same exceptions, and its transgressions equally guarded against by the warning words of the closing section of the Declaration, they bear with equal force upon the judicial mind and conscience as upon the legislative and executive branches.

Yet such is the subtle nature of *interpretation*, when brought under the insensible influence of a supposed public good, or of a powerful class, chameleon-like it makes the Constitution take on a new hue; another and another is added from time to time, each taking its predecessor as authentic exegesis, until the plain intent of the words disappears, a gloss takes its place,

and the Constitution speaks a new language. Then follows that popular feeling, that judges yield to corrupt or malign influences, such as proceed from powerful classes, combinations and wealth. Yet, while I lament the errors which have thus crept in, and their baleful effects upon the reserved rights of individuals, I have no thought of baseness as their cause. The true explanation probably lies in education, and those insensible influences which surround and affect men, and frequently in an exalted but disproportionate belief of a general good which swells the public benefit and, by contrast, belittles the individual right, until the disproportion thus mentally viewed makes the private interest "kick the beam." Pride has sometimes a slight share in this result. The ingenious advocate, by high wrought eulogy, swells the public interest to its greatest proportion, then delicately suggests the broad view a great mind of enlarged views will take. His art is sometimes proved by the result. Against these influences is put the light weight of an individual who is most generally the contestant, whilst it is too often overlooked that a precedent, once established, strikes down the rights of all others in like case. One precedent begets another, and departures keep "inching along," until the individual right, intended to be preserved by the declaration, becomes so deeply submerged it lies beneath judicial recovery, and naught but the reanimating power of the people can restore it, by amendment of the Constitution. Twice this recreative power has arrested judicial merger in the amendments of 1857, and the new Constitution, yet the process of *interpretation* still goes on.

Let me give an example or two of this disintegrating process. Take as an illustration of an entering wedge the Trenton Railroad Case, 6 Wharton, 25. This case contains great truths, and the power of a great name; yet a single departure, small as a mustard seed, crept in, and its product has covered the State with an Upas growth. Henry *v.* Bridge Company gave substance to the error, and crystalized it into law. To afford access to a bridge, a narrow street in Pittsburg was raised twelve feet before Henry's door, cutting off ingress to his dwelling, except by a narrow footwalk. The decision following the slight departure in the Trenton Railroad case, denied all redress. The cold steel of the nameless opinion, its indifference to the individual right, warrants the use of the word cruel. Other cases followed. Notably, that of Bishop O'Connor *v.* The City of Pittsburgh, 6 Harris, 187, where, by a change of grade of a street far below that formerly given to a Catholic Cathedral, "no property was *taken* (says the opinion), but the cutting down of the street consequent on the reduction of its grade, left the property useless, and the ground on which it stood worth no more than the expense of sinking the surface to the common level;" yet no compensation was allowed, on the ground that the injury was only consequential.

At the last term of the Supreme Court, a case came from Warren, where the owner of a large and costly dwelling built on a principal street of that beautiful town, was denied compensation, though his house is ruined by a new railroad laid before his door. The law had become so set and hardened in its mould it

furnished no remedy for an admitted loss. He lost all, while the corporation paid nothing, and gained all. No one denies the great truths enunciated in the Trenton Railroad case—the power of the State to take a street, to change its use, and to provide for the greater public good. No one denies that a merely consequential injury to property unconnected with the property taken was unprovided for by the Constitution, which had overlooked far-off consequences. But when conceding, as the cases do, that the right of soil to the middle of the street is, or may be, in the owner of the building, conceding his right to ingress and egress over his own property, to his domicile built upon a part of the same land, this right of passage being one of the purposes of the street, conceding the manifestly direct and immediate injury and destruction of his property, and his right of passage out and in, by undermining his foundations, or by blocking up the way, or by filling his apartments with smoke and soot, and his loss of comfort by tremors and noises by night and by day; when conceding all this, a court holds by interpretation that there is no *taking* of property within the meaning of the Declaration of Rights, the *interpretation* is so narrow, so destructive of the very spirit and scope of the Declaration, and the clearly reserved and indefeasible right of property, intended to be expressly withheld for the protection of the people themselves, it is monstrous and cruel, and becomes a mockery of the right, When the land is mine, when a new, heavier and ruinous burthen is laid upon it, when the injury is direct and immediate against my house, built upon the same ground, and my loss is

within full view of those who do the ruinous act, to tell me that nothing has been *taken* from me, and the injury is merely consequential, is so palpably unjust and contrary to the real intent of the Declaration, that the interpretation is not only narrow, but frequently subversive of individual right. No name, however great, can sanctify such a wrong.

Another illustration of the criticising process, by which the Declaration of Rights is refined away, is found in Sharpless *v.* Philadelphia, 8 Harris, 147. The *point* decided may be right, and certainly the opinion is magnificient, but on the interpretation of the Declaration of Rights, the good sense of the dissenting opinion of Justice Lewis is conspicuous; and so adverse were the people to the grounds of decision, they soon corrected them in the Amendments of 1857.

It is to be hoped that the 8th section of the 16th Article of the New Constitution will be so interpreted as not to fritter away its intent, and will prevent some of the injustice heretofore done by the narrow interpretation given to the Declaration. It extends compensation to property *injured* or *destroyed* by a municipal or other corporation.

There are other examples more modern I would notice but for obvious reasons. When the cases of Hamett *v.* Philadelphia and Washington Avenue were decided, a hope was indulged that the current of narrow interpretation was checked, and that the right of private property, and the true principles of taxation for local purposes were settled. But this hope has not been realized.

It was thought also, that the New Constitution had

ended the latitudinarian doctrine of the power of taxation; but, unfortunately, the Convention, by an endeavor to generalize in the first section of the 9th Article, missed its mark, and failed to reach its own wise intent.

Another subject is worthy of notice—the Rights of the States—not such as gave birth to secession and war, but those constitutional and essential rights, without which the Union of States would become an empire, and domestic freedom a failure. So much reproach has been brought upon "States Rights" by newspaper sciolists and demagogues, it becomes the American citizen to know these rights, and distinguish them well.

"The relation between the States and the Union is simply a division of sovereignty. The Constitution is a grant of certain powers to the United States, chiefly for general and National purposes, and a prohibition of certain others to the States, to prevent interference with Federal functions. These grants of power to a single government constitute the United States, in *this respect* one nation, supreme and sovereign by the Constitution, in regard to the powers *so conferred.* But as to the ungranted residue of powers the States are sovereign. These remain by express reservation, and as a consequence, the reserved rights of the States are indefeasible, unless transferred by an amendment or lost in (a foreign) war:" Extract from Address, October, 1865.

The express reservations are found in the original amendments.

Art. 9. "The enumeration in the Constitution of

certain rights shall not be construed to deny or disparage others retained by the people." This controls interpretation against the States.

Art. 10. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Hence the rule of interpretation of the Constitution, as settled by Chief Justice Marshall and the best jurists, is, that the powers of the Federal Government must be found in the express grants of that instrument, including the grant of power to make all laws necessary and proper for carrying them into execution.

The States are the pillars of the Union, and their existence fundamental and vital. The fabric is reared upon a basis of States, and cannot exist without State action, as its essential provisions show. Hence the importance of the constitutional reservation of their rights, and those of the people.

The present tendency is to a latitudinarian interpretation of the Constitution, and hence I have referred to the subject. Allow me a quotation from an opinion (Craig *v.* Kline, 15 P. F. S. 407):

"The doctrine of the rights of the States, pushed to excess, culminated in civil war. The rebound, caused by the success of the Federal arms, threatens a consolidation equally serious. In this condition of affairs, the landmarks of the Constitution, as planted by Chief Justice Marshall and his associates, on the solid ground of reason, and a due regard to the rights of the States and the Union, constitute the only safe guides of decision."

I have no apology to make for the reference to these two subjects, for they are germane to the experience of a lawyer, upon which I have spoken; and they concern every citizen, whose duty it is to know and understand the constitutions under which he lives.

Perhaps I cannot conclude better than by a word of advice to young lawyers. Be content with reasonable fees—what is a just compensation—never oppressing the poor, the fatherless, or the widow. Avoid bargains for large contingent fees, and for a division of the fruits of litigation. Such bargains corrupt and degrade. They imply great uncertainty and desperation of the case. These lead to efforts to provide means of success; and, as a consequence, they tempt and debauch the mind of the lawyer, leading him to unjustifiable or doubtful acts. Nothing is more perverting or blinding than a large yet doubtful pecuniary interest. When a lawyer carries on a law suit of this kind, at his own expense, the law pronounces it champerty—a crime.

Be not too technical, insisting unnecessarily upon a strict rule. I do not mean that one should relinquish a rule of law or of practice essential to the justice of his client's cause. He ought not to yield his client's just rights, but he ought not to insist upon an advantage which does him no good and does his opponent injury. A liberal course, dictated by good sense, has great professional advantage. It makes friends of brethren, and often secures similar favors to the advantage of his client, while it recommends him to the court.

Avoid politics in its customary sense, especially

shunning the schemes of rings and combinations to affect elections, and for corrupt ends. Indeed, to every young lawyer who desires to obtain and retain a good practice, and to preserve good habits, I would say "keep out of office." Business men avoid the politician, knowing he will neglect his business. The wrecks lying along the coast of the profession of young men of talents and attainments, who have sought and obtained political place, are a lamentable sight often witnessed. Could I return upon my own pathway to gather up the wrecks I have seen, thus broken upon the sunken rocks of political life, their number would astonish and fill with sorrow.

If ambition fires you, let it be for the Bench; or if for other stations, wait till middle age has solidified your habits and principles, and your toil has secured a sufficient reward. The Bar—its associations and fellowships, its knightly and courteous contests, its brilliant displays of wit and eloquence, of mental acumen and forensic learning, its love of right and manly independence, its kindly and ingenuous friendships, these are the true love of the lawyer, the gratification of his early ambition, and the guiding star of his hope.

Oh, may its lovely light, shining like the ancient star in the east, to lead his footsteps, ever reign in benignant sway to guide ingenuous youth into virtue's paths, and to that haven of honor and happy rest which always blesses, where right, courage and conscience direct the way.

CLASS OF 1878.

OCTOBER TERM.

Name.	Residence.	Preceptor.
ABBOTT, EDWARD,	Philadelphia,	M. H. Todd.
ADAMS, JOHN Q.,	Philadelphia,	B. H. Brewster.
ALLEMAN, JOHN S.,	Selin's Grove,	E. S. Miller.
ALLISON, CHARLES A.,	Hend'snvle, N.C,	J. H. Heverin.
BAKEWELL, JAMES K.,	Pittsburgh,	Geo. Harding.
BARBER, ROBERT M.,	Philadelphia,	J. M. Pile.
BLIGHT, WILLIAM S., JR.,	Philadelphia,	Judge Penrose.
BELL, J. SNOWDEN,	Philadelphia,	H. Baldwin.
BOURGUIGNON, CHARLES L.,	Philadelphia,	W. H. Staake.
BRACKEN, WILLIAM,	Philadelphia,	Geo. Northrop.
BRANDT, WINFIELD S.,	Philadelphia,	Read & Pettit.
BROWN, FRANCIS S.,	Dover, Del.,	F. Sheppard.
BROWN, W. ROSS,	Chester,	E. S. Miller.
BUNTING, JOSEPH T.,	Philadelphia,	E. Hopper.
CABRERA, CHARLES A.,	Philadelphia,	O'Byrne.
CAMPBELL, LOUIS D.,	Johnstown,	J. L. Jones.
CARROLL, THOMAS J.,	Philadelphia,	P. E. Carroll.
CHESNUT, JOHN H.,	Philadelphia,	H. P. Wilbur.
CLAY, ALFRED G.,	Philadelphia,	J. A. Clay.
COPENHAVER, WILLIAM K.,	McAllisterville,	B. F. Fisher.
CORRY, JAMES C.,	Philadelphia,	P. McCall.
CORSON, ROBERT T.,	Philadelphia,	W. N. West.
CRITTENDEN, J. PARKER,	Philadelphia,	S. B. Huey.
CUNNINGHAM, FRANCIS A,	Philadelphia,	T. J. Diehl.
CURTIS, THOMAS C.,	Pt. Pleasant, N.J.,	C. S. Pancoast.
DALY, EUGENE S.,	Philadelphia,	D. B. Meany.

Name.	Residence.	Preceptor.
DOUGHERTY, JOSEPH N.,	Philadelphia,	W. A. Redding.
DULLES, PERIT,	Philadelphia,	
DULLES, WILLIAM, JR.,	Philadelphia,	S. B. Huey.
DRANSFIELD, JOSEPH, JR.,	Upland,	B. L. Temple.
EDWARDS, THOMAS A.,	Philadelphia,	R. L. Ashhurst.
ENDICOTT, ALLEN B.,	May's Lnd'g, N.J.	P. L. Voorhees.
ENGLISH, E. DAVIS,	Philadelphia,	J. W. Paul.
ETTING, THEODORE M.,	Philadelphia,	H. R. Edmunds.
EYRE, LINCOLN L.,	Philadelphia,	R. L. Ashhurst.
FAHY, THOMAS A.,	Philadelphia,	E. R. Worrell.
GALBRAITH, ROBERT S.,	Philadelphia,	George F. Munce.
GARBER, HUMBOLDT,	Philadelphia,	Thomas J. Ashton.
GARDE, GEORGE J.,	Philadelphia,	J. L. Alcorn.
GARSED, HENRY E.,	Philadelphia,	R. B. Bayly.
GEYELIN, HENRY L.,	Philadelphia,	E. C. Mitchell.
GLENN, HARRY R.,	Frankford,	W. Hopple, Jr.
GOURICK, DAVID A.,	Philadelphia,	W. A. Redding.
GRIGG, JEROME B.,	Pemberton, N.J.	Gaskill & Son.
HALE, JAMES T.,	Towanda,	F. Rawle.
HALL, HENRY W.,	Philadelphia,	H. C. Thompson.
HALL, WALTER F.,	Philadelphia,	E. C. Mitchell.
HARTUNG, ALBERT H.,	Philadelphia,	W. E. Knowles.
HEILNER, REV. SAMUEL A.,	Philadelphia,	
HENDRY, JOHN B.,	Philadelphia,	E. C. Mitchell.
HOAGLAND, J. MILTON,	Philadelphia,	Prof. Parsons.
HOLSMAN, DANIEL,	Philadelphia,	McVeagh & Bisp'm.
HORSTMANN, HENRY F.,	Philadelphia,	J. D. Lee.
HOWE, GEORGE A.,	Pittsburgh,	E. C. Mitchell.
JOHNSON, ALFRED C.,	Philadelphia,	Prof. Morris.
JOHNSON, BAKER,	Philadelphia,	G. L. Crawford.
JONES, B. GRIFFITH,	Philadelphia,	Joseph Abrams.
KAY, ANDREW T.,	Philadelphia,	A. Thackara.
KAUFFMAN, PERCIVAL C.,	Mechanicsburg,	McVeagh & Bisp'm.
KEATOR, JOHN F.,	New York,	J. H. Heverin.
KELLEY, WILLIAM D., JR.,	Philadelphia,	West & McCarthy.
LAMORELLE, JOSEPH F.,	Philadelphia,	Prof. Parsons
LANDRETH, LUCIUS S.,	Philadelphia,	Is. Hazlehurst.

Name.	Residence.	Preceptor.
LANG, JAMES T.,	Philadelphia,	M. H. Brown.
LEWIS, FRANCIS A., JR.,	Philadelphia,	McVeagh & Bisp'm.
LEWIS, LAWRENCE, JR.,	Philadelphia,	W. H. Rawle.
LIEDER, ALEXANDER,	Philadelphia,	Read & Pettit.
LIGGINS, WILLIAM W.,	Philadelphia,	J. L. Tull.
LIPPMAN, JOSEPH,	Philadelphia.	J. S. Price.
LONGSTRETH, THOMAS K.,	Philadelphia,	Admitted.
MCCARTNEY, HUGH J.,	Philadelphia,	J. M. West.
MCCOLLIN, EDWARD G.,	Philadelphia,	J. R. Rhoads.
MARSTON, HENRY, W.,	Philadelphia,	L. H. Redner.
MARTIN, J. WILLIS,	Philadelphia,	J. S. Price.
MARX, FRANK B.,	Allentown,	
MEIER, ROBERT A.,	Philadelphia,	Read & Pettit.
MILLER, WILLARD P.,	Lambertville,N.J.	F. Rawle.
MONAGHAN, PETER J.,	Philadelphia,	Prof. Parsons.
MOORE, ARTHUR,	Philadelphia,	A. Moore,
MURPHY, EDWARD H.,	Philadelphia,	M. H. Todd.
NIXON, WALTER H.,	Philadelphia,	Sharp & Alleman.
PHILLER, GEORGE S.,	Philadelphia,	R. L. Ashhurst.
PIGOTT, H. HERBERT.	Woodbury, N.J.	G. C. Purves.
RICKEY, WILLIAM,	Philadelphia,	J. M. Moyer.
RITTENHOUSE, THOMAS W.,	Rising Sun, Md.	Read & Pettit.
ROEPKE, FRANCIS L.,	Philadelphia,	E. C. Quin.
RUDDEROW, AUGUSTUS J.,	Philadelphia,	J. M. Collins.
SAGERS, WILLIAM W.,	Philadelphia,	Conveyancer.
SAYRE, CHARLES H.,	Philadelphia,	J. S. Gerhard.
SCOTT, JOHN, JR.,	Philadelphia,	McVeagh & Bisp'm.
SHARP, LEEDOM,	Philadelphia,	E. C. Mitchell.
SCHERER, ARTHUR H.,	Philadelphia,	D. R. Patterson.
SHOEMAKER, FRANKLIN G.,	Philadelphia,	J. G. Brinckle.
SHOEMAKER, JOSEPH H.,	Philadelphia,	L. R. Fletcher.
SHOEMAKER, WILLIAM H.,	Philadelphia,	C. E. Morris.
SIMON, FRED. C.,	Philadelphia,	J. M. Vanderslice.
SINER, JOHN A.,	Philadelphia,	G. S. Graham.
SMITH, HERBERT,	Philadelphia,	E. S. Miller.
SMITH, THEODORE DE K.,	Philadelphia,	J. S. Gerhard.
SMYTH, GEORGE W.,	Philadelphia,	H. P. Wilbur.

Name.	Residence.	Preceptor.
SMYTH, WILLIAM J.,	Philadelphia,	J. W. Coulston.
SPACKMAN, WILLIAM M.,	Philadelphia,	U. P.
STETLER, WILLIAM H.,	Philadelphia,	E. S. Miller.
TAITE, FRANK G.,	Philadelphia,	
TAYLOR, HARRY S.,	Philadelphia,	A. S. L. Shields.
TOBIN, F. THOMAS,	San Francisco,	B. H. Brewster.
TOWNSEND, URIE,	West Chester,	A. Stewart.
TWIBILL, THOMAS P.,	Philadelphia,	W. Gorman.
VANBUSKIRK, GEORGE M.,	Philadelphia,	J. R. Rhoads.
VANDUSEN, GEORGE R.,	Philadelphia,	E. S. Miller.
WEISER, JAY G.,	Mifflintown,	R. Vaux.
WEST, JOSEPH V.,	Philadelphia,	D. Dougherty.
WHITE, THOMAS E.,	Philadelphia,	G. M. Dallas.
WHITEHEAD, RICHARD R.,	Trenton,	F. Kingman.
WICKERSHAM, GEORGE W.,	Philadelphia,	R. H. McGrath.
WILKINSON, ALFRED J.,	Philadelphia,	A. L. Smith.
WILLIAMS, CARROLL R.,	Philadelphia,	A. Moore.
WIRGMAN, FRANK M.,	Philadelphia,	Neilson & Neilson.
WISE, WILLIAM G.,	Philadelphia,	A. Longstreth.
WITHEROP, JOHN WILLIS,	Titusville,	E. S. Miller.
YERKES, CHARLES J.,	Philadelphia,	Jno. L. Kinsey.
ZIEGLER, GEORGE H,	Philadelphia,	J. M. West.